No. 12386

In the United States Court of Appeals for the Ninth Circuit

TWIN OAKS COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
GEORGE D. WEBSTER,
Special Assistants to the Attorney General.

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CITATIONS

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OPINION BELOW

The opinion of the Tax Court (R. 277–284 is not officially reported.

JURISDICTION

This petition for review (R. 327–331) involves federal income, declared value excess profits and excess profits taxes for the taxable years 1942, 1943 and 1944. On October 3, 1947, the Commissioner of Internal Revenue mailed to the taxpayer notice of a deficiency in the total amount of $55,638.42. (R. 10–11.) Within ninety days thereafter and on December 24, 1947, the taxpayer filed a petition with the Tax Court for a redetermination of that deficiency under the provisions of Section 272 of the Internal Revenue Code. (R. 2, 5–19.)

The decision of the Tax Court was entered on July 18, 1949. (R. 325–326.) The case is brought to this Court by a petition for review filed September 16, 1949 (R. 327–331), pursuant to the provisions of Section 1141 (a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948.

QUESTION PRESENTED

Whether the Tax Court correctly held that the income for the years 1942, 1943 and 1944 of an alleged partnership, Twin Oaks Builders Supply Company, could be properly attributed to the taxpayer corporation under Section 22 (a) of the Internal Revenue Code.

STATUTE INVOLVED

This is set forth in the Appendix, *infra.*

STATEMENT

The Tax Court found the following facts (R. 268–277):

Taxpayer, an Oregon corporation with principal office at Eugene, Oregon, filed its income and declared value excess-profits tax returns for the years 1942, 1943 and 1944 with the Collector of Internal Revenue for the district of Oregon. It was organized in 1924 and engaged in the sale of lumber and builders supplies at Eugene and Junction City, Oregon, and until 1937 at Cottage Grove, Oregon. In 1941 it had outstanding 946 shares of stock of a par value of $94,600, or $100 each. Half of these shares were owned by John J. Rogers, taxpayer's president, and the other half were owned by Louis C. Scharpf, taxpayer's secretary-treasurer, and his wife, Eva M.

Scharpf, in the amounts of 35.3 and 437.7 shares, respectively. Two of the Scharpf shares were held in the name of E. R. Bryson, an attorney, to qualify him as a director with Rogers and Scharpf. Eva M. Scharpf purchased her shares at various times with funds inherited from her father. She and Rogers had acquired most of their shares before 1930. (R. 268.)

During the years 1935–1940 taxpayer's books showed assets which were carried at total values ranging from $117,283.26 in 1938 to $150,431.66 in 1940. These assets consisted chiefly of merchandise inventory and accounts receivable and in addition there were buildings, furniture and fixtures which had a book value of about $37,000. During 1935–1940 taxpayer sustained small operating losses, but receipts from other sources produced net incomes of a little over $2,000 for 1936, 1937 and 1939, $677.05 for 1935, and $6,036.35 for 1940. As officers, Rogers and Scharpf received equal salaries which, combined, ranged from $9,800 in 1937 to $14,400 in 1940. Both were actively engaged in the conduct of taxpayer's business; Rogers purchased stocks of lumber, shingles, molding and coal and had charge of credit and collections; Sharpf made purchases of all other building materials handled. Their wives rendered no services. (R. 268–269.)

In the latter part of 1939 Scharpf suggested to Rogers that the business be conducted as a partnership. Rogers was not agreeable to the change, being reluctant to assume the unlimited liability of a partner. Scharpf persisted, however, and during 1940

both had a number of conferences with Bryson, the attorney, who had given them advice for many years. The attorney recommended acceptance of a plan to which Rogers finally assented, and pursuant thereto Rogers, Scharpf and their wives made a partnership agreement as of January 1, 1941, whereby the four were to conduct the business as equal partners with operating assets which taxpayer was to transfer to them and on premises which taxpayer was to retain and rent to them. (R. 269.)

At the close of 1940 taxpayer's balance sheet showed the following assets and liabilities (R. 269–270):

Assets		
Cash		$243.96
Notes and accounts receivable		37,477.76
Merchandise		70,892.48
Investments		2,926.09
Land		23,993.25
Buildings	$26,276.49	
Furniture	6,959.28	
Trucks	5,239.49	
	38,475.26	
Less: Depreciation	23,653.78	
	14,821.48	14,821.48
Paid insurance		176.64
Total		150,531.66
Liabilities		
Accounts payable		16,271.55
Notes payable		34,238.00
Accrued taxes		3,001.89
Earned surplus		2,420.22
Capital stock		94,600.00
Total		150,531.66

The accounts or notes payable comprised $2,144 due Rogers, of which $1,200 was salary and $944 dividends; $1,270.60 due Scharpf, of which $1,200 was

salary and $70.60 dividends; a note for $1,500 due Corabelle M. Rogers, and a dividend of $873.40 due Eva M. Scharpf. Taxpayer's land and buildings consisted of town lots at Eugene, improved with a concrete building and hydraulic elevator, a large frame building, a storage shed and spur railway track; two lots at Junction City improved with a hollow tile warehouse and a wooden shed, and an old warehouse and vacant lots at Cottage Grove. The State Highway Commission had drafted plans to run a new highway across the principal property at Eugene, but later changed the highway routing. Taxpayer also occupied leased premises. About nine-tenths of its sales were made at Eugene; one-tenth at Junction City, and the Cottage Grove property was sometimes rented, but produced little income. (R. 270–271.)

Pursuant to the plan agreed upon for the formation of a partnership taxpayer's directors on January 2, 1941, resolved to change taxpayer's name from Twin Oaks Builders Supply Company to Twin Oaks Company and to accept the offer of Rogers, Scharpf and their wives to acquire its current assets at book values in consideration of their assumption of its accounts payable and their two per cent note for the balance; to lease to them its fixed assets, and to discontinue its builders supply business. On January 25, but as of January 1, 1941, Rogers, Scharpf and their wives each signed a partnership agreement, declaring their intention to associate themselves together as copartners under the firm name of Twin Oaks Builders Supply Company for purchasing from taxpayer, which then

had the same name, all its assets except real estate, fixtures and equipment and for leasing the latter. It was agreed that each contribute $2,000 and share equally in profits and losses; that the partnership engage in the same business as that previously conducted by taxpayer; that such business be conducted by Rogers and Scharpf, each performing "the work heretofore by him performed" and each being entitled to a salary in addition to his share of the profits; that a bank account be opened in the partnership's name against which checks could be drawn by Rogers or Scharpf or by "some person to whom they may jointly in writing delegate such power." (R. 271–272.)

Each of the partners shall have an equal voice in the control of the business and the affairs of the copartnership and in the decision of any question which may arise. (R. 272.)

The duration of the agreement was not limited in time, but either pair of spouses desiring dissolution was required to notify the other pair and offer to purchase the others' interest not only in the partnership but also in taxpayer's stock, and to assume the indebtedness of both firms. On acceptance of the offer the sellers were to agree not to engage in the same business in the area for four years. If the offer should not be accepted within 90 days, the offering spouses could require a termination and liquidation of the partnership. For the purposes of these provisions each pair of spouses "shall be deemed as one copartner." Upon the death of a wife the surviving husband was bound to purchase her interest in

the partnership and the corporation for a price determinable by reference to book value. Upon the death of a husband the surviving husband and his spouse had a 90-day option to purchase the interests of both the others on like terms. These terms provided for installment payments with security and the arbitration of disputes. By a contract of May 31, 1938, Rogers, as party of the first part and owner of one-half of taxpayer's shares, and Scharpf and wife, as parties of the second part and owners of the other half, had agreed that upon the death of either husband, the survivor should have the right to acquire the other party's stock in taxpayer on like terms. By a "Supplement to Partnership Agreement," signed January 30, 1941, it was recited that Corabelle M. Rogers and Eva M. Scharpf "render and are expected to continue to render some personal services to the partnership" and it was agreed that each "be paid a salary of $25.00 per month," regardless of profits and losses for the services which were to be performed "at their convenience." (R. 272–273.)

On January 2, 1941, Rogers, Scharpf and their wives signed a certificate of their intention to conduct a lumber and building supplies business at Eugene and Junction City, Oregon, under the assumed name of Twin Oaks Builders Supply Company, and filed it in the public records of Lane County, Oregon, on January 18. The partnership, by Rogers, gave to taxpayer its note, dated January 2, 1941, in the amount of $89,378.35 payable in one year with two per cent interest. This amount represented the ex-

cess of the book value of current assets covered by the purchase offer above the accounts payable which the partnership was to assume. As of January 1, 1941, entries were made in taxpayer's books indicating the transfer of its cash, notes and accounts receivable, merchandise, investments of $2,726.09, and delivery equipment of $1,809.61 to the partnership, and the elimination of $16,271.55 and $7,500 of accounts and notes payable, respectively, from its liabilities. (R. 273–274.)

As of the same date books were opened in the name of the partnership, indicating as its assets the cash, notes and accounts receivable, the merchandise, investments and delivery equipment in the same amounts transferred from taxpayer's books and also on account receivable of $500 from Rogers. Liabilities were shown as accounts payable of $16,271.55, notes payable of $89,378.35, and "partners' investment accounts" of $8,000. The $8,000, representing the $2,000 contribution of each partner required by the agreement, was provided largely by the cancellation of amounts owed to them or to members of their families by taxpayer on account of unpaid salary, dividends and monies advanced. (R. 274.)

By a written agreement dated January 2, 1941, taxpayer leased to the partnership all its remaining assets, consisting of the real properties, fixtures and equipment, for $3,000 a year. The partnership on the same date filed with the State Industrial Accident Commission a "notice of engaging in hazardous occupation" and of employing 25 workmen on an estimated monthly payroll of $2,600. It registered with the State

Unemployment Compensation Commission and filed required reports thereafter. It applied for and received a registration number under the Social Security Act. It advised the First National Bank of Eugene about taxpayer's transfer of assets to it, and opened an account with the bank from which each of the four partners was authorized to withdraw funds. It served formal notice on the bank in December 1944 that each of them had power to act for the firm in borrowing money, making and endorsing notes and in transferring assets. (R. 274–275.)

After January 1941 the lumber and builders supply business was conducted by Rogers and Scharpf as before; the partnership bore the same name that taxpayer had formerly borne; made contracts and transacted business in that name, and taxes were assessed against it in that name. (R. 275.)

There were no changes obvious to customers except the elimination of officers' names on stationery. The wives of Rogers and Scharpf, who had rendered no services before, sometimes signed pay roll checks and notes and listed accounts receivable once a month. Separate bank accounts and separate books were maintained for taxpayer corporation and for the partnership. Taxpayer's activities, as recorded, were limited to the owning and leasing of real estate and equipment. Its income for the years 1941–1944 consisted of the $3,000 rent and interest on the note of the partnership and some very petty miscellaneous items. Its books indicated a loss of $904 in 1941 and net incomes of a few hundred dollars for the succeeding years. In July 1941 it bought a lot and old frame

residence adjoining its property in Eugene for between \$3,500 and \$4,000 and demolished the building. The lot has since been used in the builders supply business for storage. In December 1943 it bought another lot and residence in Eugene for \$2,500. The property was then rented for \$66 a month; the tenant remained in possession and thereafter paid the rent to the partnership. In 1946 and 1947 the partnership paid \$4,200 to taxpayer as rent. (R. 275–276.) The books of the partnership indicate the following gross and net incomes for the years indicated (R. 276):

Year	Gross Income	Net income
1941	\$375, 587. 51	\$29, 776. 20
1942	262, 931. 20	18, 525. 29
1943	356, 930. 54	42, 086. 52
1944	512, 001. 16	66, 119. 33

The net income was each year credited on the partners' accounts, \$6,600 being credited to each husband as salary; \$300 to each wife as such and the remainder divided among them in equal parts. The partnership paid taxpayer the \$89,378.35 due on the note plus two percent interest thereon in annual installments ending in December 1946, using earnings and the proceeds of property sales. The partnership has endorsed taxpayer's notes for bank loans. (R. 276.)

For the years 1941–1944 corporation income and declared value excess-profits tax returns were filed for taxpayer and separate partnership returns for the partnership. Taxpayer filed no excess profits tax returns for 1943 and 1944. The Commissioner determined deficiencies in taxpayer's income and declared

value excess-profits taxes for 1942, 1943 and 1944, and in excess profits taxes for 1943 and 1944 by including in taxpayer's income the profits reported by the partnership, with certain adjustments, under the view that the partnership, transfers of assets and leases to it were without substance and should be disregarded for federal tax purposes. For the same reason taxpayer's reported operating loss of 1941 was not allowed as a carry-over for 1942. (R. 276–277.)

The Tax Court held that the Commissioner was correct in refusing to recognize the partnership for tax purposes. (R. 277–284.)

SUMMARY OF ARGUMENT

Involved in the insant case is a split-up of an existing, unitary business into two parts—the taxpayer corporation and the purported partnership. We submit that the income of the split-off enterprise—the partnership—should be taxed to the corporation.

The business was conducted in precisely the same way after the transfer as it was before. This was not a division of a business into logical units which are separable, such as the selling and distributing end of a business being divided from the manufacturing end, or the separation of commission activities from trading activities. No substantial business purpose was served by the severance. No new capital was contributed or new services rendered after the separation. The inter-company dealings were not arms' length transactions. The transaction was, in effect, an assignment of income, and the purported partnership should be ignored for purposes of the federal income tax.

Also, since no issue was raised in the pleadings relative to the inclusions of the accumulated earnings and profits of the alleged partnership in the invested capital of the taxpayer, it was too late to suggest it first during the computation under Rule 50.

ARGUMENT

I

The Tax Court correctly sustained the Commissioner's determination that the income of the alleged partnership, Twin Oaks Builders Supply Company, was in substance the income of the taxpayer under section 22 (a) of the Internal Revenue Code.

The question here is substance versus form, and the law is familiar. *Helvering* v. *Clifford,* 309 U. S. 331; *Gregory* v. *Helvering,* 293 U. S. 465; *Commissioner* v. *Culbertson,* 337 U. S. 733. This is merely another one of the situations in which, in the circumstances, the conclusion is inescapable that the taxpayer earned the income diverted to the partnership and should be taxed thereon. See *Lucas* v. *Earl,* 281 U. S. 111; *Helvering* v. *Horst,* 311 U. S. 112.

It should be emphasized initially that *Commissioner* v. *Culbertson, supra,* is not contrary to the Commissioner's position.[1] Prior to that decision, seizing upon

[1] It should be noted that this is not a family partnership case, as such. But the general principles enunciated in the *Culbertson* case, *supra*, are applicable. Similarly applicable are the principles enumerated in other situations where mere form has been ignored. *Gregory* v. *Helvering*, 293 U. S. 465 (corporate existence ignored for income tax purposes) ; cases arising under Section 45 of the Internal Revenue Code—see *Cooper*, Section 45, 4 Tax L. Rev. 131 (1949) ; *Helvering* v. *Clifford*, 309 U. S. 331; and cases arising under Section 3797 of the Internal Revenue Code—see *Morrissey* v. *Commissioner*, 296 U. S. 344, and *Lewis & Co.* v. *Commissioner*, 301 U. S. 385.

an approach stemming from a selective culling of *Commissioner* v. *Tower,* 327 U. S. 280, and *Lusthaus* v. *Commissioner,* 327 U. S. 293, an objective standard was laid down which family partnerships had to meet in order to receive recognition for tax purposes. The *Culbertson* case, *supra,* merely holds that the emphasis must not be on the setting down of an itemized objective standard, but rather on the real intent of the partners gained from all the circumstances.

The Tax Court, in its opinion (R. 283), indicates that it is not holding anything interdicted by the later *Culbertson* opinion:

> This testimony, in our opinion, affirmatively supports the respondent's view that *the purpose of the partnership was to achieve a reallocation of income among family groups.* [Emphasis supplied.]

Specifically this case comes in the general area of business split-ups. The most common type of split-up occurs when a corporation transfers some branch of its business operations to a partnership composed of its stockholders or to a single proprietorship represented by its sole stockholder.

Since most of these split-ups follow this conventional pattern, it is futile to analyze the cases separately as if each case were unique or *sui generis.* The important thing is to see what factual variants cause different results and to discover the judicial criteria which have been erected for either sustaining or condemning the validity of such a business split-up.

In the instant case it is clear that the partnership presented a device for paying corporate profits to its

shareholders without first funneling them through the corporation. In such a situation, the tax falls upon the corporation and the entity of the partnership must be ignored. *Gregory* v. *Helvering, supra; Minnesota Tea Co.* v. *Helvering,* 302 U. S. 609. *Griffiths* v. *Helvering,* 308 U. S. 355. *Higgins* v. *Smith,* 308 U. S. 473. As the Tax Court pointed out (R. 280–282):

> But we do not perceive substance in these forms. After as before January 1941 the business was conducted by Rogers and Scharpf under the same name with the same assets in the same manner. No additional funds were paid in as operating capital; no assets were removed; and there was no change in policy or in managing personnel apart from the negligible services of the wives * * *. But as the note itself was paid off by earnings of the business, it seems plain that the capital contributions to the partnership and the sale price of the assets were both satisfied by bookkeeping entries conforming to a scheme which had no substantive effect whatever on the business. And since petitioner's officers continued as business managers, it can be said here as in *R. O. H. Hills, Inc.,* 9 T. C. 153, that:
>
> "* * * the partnership contributed absolutely nothing either in services or capital to the production of the income * * *. * * * its function and purpose were merely to siphon off the greater portion of the earnings * * *."
>
> Cf. *Ingle Coal Corporation,* 10 T. C. 1199; *Forcum-James Co.,* 7 T. C. 1195.

The Tax Court's findings in this respect are not only not "clearly erroneous" (*United States* v. *Gypsum Co.,* 333 U. S. 364, 395) but are abundantly supported by the record.

In the first place, there was no business carried on by the partnership which was different from that carried on by the corporation. In addition, this is not the case of a logical, natural division of a corporate business into a separable unit. Taxpayer's business was unitary in character. There has not been at any time—before or after January 1, 1941—any departments or functional operating divisions of taxpayer. The real properties of the taxpayer were essential to the conduct of the business. Again, as the Tax Court concluded (R. 282):

> Petitioner's business, it should be noted further, was unitary in character and in this respect differed from the businesses considered in *Miles-Conley Co., Inc.,* 10 T. C. 754; *Buffalo Meter Co.,* 10 T. C. 83, and *Seminole Flavor Co.,* 4 T. C. 1215.

See also, *Advance Machinery Exchange, Inc.* v. *Commissioner,* decided January 25, 1949 (1949 P-H T. C. Memorandum Decisions Service, par. 49,026).

Further, this was not an arms' length transaction, and such inter-company dealings marked by a lack of fair consideration between the parties have been relevant in a consideration of the reality of a partnership. See *R. O. Hill, Inc.* v. *Commissioner,* 9 T. C. 153, 157. Here, the $89,378.35 unsecured promissory note, representing the major portion of the purchase price bore interest at the rate of two per cent. (R.

273.) The taxpayer's own witness testified that the then prevailing local interest rate for commercial loans was six percent. (R. 191.)

Also relevant in this connection is the fact that the fixed annual rental to be paid by the partnership for the use and occupancy of the taxpayer's properties, furniture and fixtures was $3,000 a year. (R. 274.) Yet the fair rental value of the real properties, furniture and fixtures in question was about $7,000 a year. (R. 209, 238.)

Similarly important in considering the correctness of the conclusion of the Tax Court is the fact that the banks in continuing the line of commercial credit subsequent to January 1, 1941, relied upon its faith and confidence in the set-up, as represented by both the taxpayer corporation and the purported partnership. (See R. 189–191.) In other words, the business was considered the same by outsiders dealing with the firm.

Further supporting the Commissioner's position that this was a mere formal arrangement for siphoning profits from the taxpayer—an assignment of income—is the basis for the Tax Court's conclusion (R. 283) that the purpose of the formation of the alleged partnership was "to achieve a reallocation of income among family groups." The facts forming the foundation for this conclusion were summarized by the Tax Court as follows (R. 283):

> Attorney Bryson testified that Scharpf felt entitled to a more substantial interest in the business than that represented by his 35.3 shares and wished the partnership as a means

> of getting that interest while Rogers opposed, fearing the unlimited liability and the possibility that Scharpf would want to take in his sons. Scharpf himself said that he wanted a partnership "so that I would have a decent share of the profit"; also that under such a form of organization he could get out more readily. He expected Rogers to have a half interest, but Rogers decided to take his wife in also because, in his own words, "although I was the only member of the corporation, still it was a family affair."

Another factor to be considered is the existence of a business purpose. In *Seminole Flavor Co.* v. *Commissioner,* 4 T. C. 1215, it was shown that the facilities and organization of the corporation were so inadequate that it was unable to give its bottlers the advertising, merchandising and supervisory services called for in their franchise agreements. The transfer of these functions to the partnership, it was urged, afforded the most feasible and flexible arrangement for overcoming the merchandising and marketing difficulties of the corporation. In *Miles-Conley Co.* v. *Commissioner,* 10 T. C. 754, the split-up was justified on the ground that it was the common and accepted practice for the larger produce commission firms to specialize in either fruits or vegetables, or even in certain types of fruits and vegetables. In *Standard Fruit Product Co.* v. *Commissioner,* decided August 22, 1949 (1949 P-H T. C. Memorandum Decisions Service, par. 49, 207), the partnership was formed to handle "substitutes" under a different

brand name so as not to injure the good will and reputation which the corporation had built up.

In the case at bar, no such business purpose was served. As indicated, *supra,* there was no change in the business—lumber and builders supplies were sold both before and after January 1, 1941. No capital was added to the business. There was no change in the management.

The cases cited by taxpayer (Br. 37–39) are clearly distinguishable. The significant fact of *Ross* v. *Commissioner,* 129 F. 2d 310 (C. A. 5th), is not present. There the corporation and the partnership (comprised of its stockholders) were formed at approximately the same time and no part of the business of the corporation was relinquished to the stockholders. In *Epsen Lithographers, Inc.* v. *O'Malley,* 67 F. Supp. 181 (Nebr.), there was a business purpose, i. e., to retain the services of the younger sons, and, the amount fixed as rental to be paid by the partnership to the corporation was fair and reasonable. The other cases, *Seminole Flavor Co.* v. *Commissioner, supra, Buffalo Meter Co.* v. *Commissioner*, 10 T. C. 83, and *Miles Conley Co.* v. *Commissioner, supra,* have already been shown to be inapplicable here since they involved businesses subject to a logical division.

The fact of keeping separate books cannot save this partnership. Many factors are to be weighed in a determination of whether an alleged entity is a fiction. The lack of an apparent business purpose, the fact that the purchase agreement and the rental agreement were not arms' length transactions, and the unitary nature of the business of taxpayer are all factors

compelling the conclusion that, in effect, this was not an actual business split-up, but merely an assignment of income. The income of the alleged partnership is in reality that of the taxpayer.

II

The Tax Court properly refused to consider the question relative to the inclusion of the accumulated earnings and profits of the alleged partnership in the invested capital of the taxpayer

No issue was raised in the pleadings relative to the proper computation of the invested capital of taxpayer. This was first suggested during the computation under Rule 50. On this point, the Tax Court stated (Br. 326):

> But as no issue was raised in the pleadings as to the computation of taxes under respondent's determination that the partnership should not be recognized, none may be now raised and decided under Rule 50.

Taxpayer argues (Br. 51–61) that the Tax Court erred in taking this position. However, it is well settled that new issues, i. e., one not involved in the original proceedings, will not be considered and decided under Rule 50. The taxpayer has had his day in court and the proceedings under Rule 50 are exclusively for purposes of computation. As was pointed out by this Court in *Fifth Street Bldg.* v. *Commissioner,* 77 F. 2d 605, 609, in a case involving a determination as to whether a sum paid to acquire a lease was includible in invested capital—

> The Commissioner moved to disallow depreciation on the lease during the period from Janu-

ary 2, 1921, to May 18, 1921, and petitioner moved to exclude the rentals for that period from its taxable income and include that amount in its invested capital for 1921. Since this was a new issue, and as "New issues, other than those relating to computations, cannot be raised upon computation of the tax under Rule 50" [*Davison* v. *Commissioner* (C. C. A. 2) 60 F. (2d) 50, 52], the Board properly denied the motions. See, also, *Bankers' Coal Co.* v. *Burnet,* 287 U. S. 308, 53 S. Ct. 150, 77 L. Ed. 325.

See also, *Commissioner* v. *Fifth Avenue Bank,* 84 F. 2d 878 (C. A. 3d).

CONCLUSION

Accordingly, the decision of the Tax Court should be affirmed.

Respectfully submitted.

THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
GEORGE D. WEBSTER,
Special Assistants to the Attorney General.

MAY 1950.

APPENDIX

Internal Revenue Code:

SEC. 22 [As amended by Sections 1 and 3, Public Salary Tax Act of 1939, c. 59, 53 Stat. 574].

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.

*   *   *   *   *

(26 U. S. C. 1946 ed., Sec. 22.)

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